

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund  
6 reimbursement[~~procedures~~].

7 RELATES TO: KRS 61.878(1)(c), 224.1-400, 224.1-405, 224.10-410, 224.10-420,  
8 224.10-430, 224.10-440, 224.10-470, 224.60-110[224.01-400, 224.01-405], 224.60-120, 224.60-  
9 130, 224.60-135, 224.60-140, 224.60-150, 40 C.F.R. 280, Subpart H

10 STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a)  
11 through (e)[224.60-130(1)(a)-(e)]

12 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e)  
13 requires the establishment of the procedures to administer the Petroleum Storage Tank  
14 Environmental Assurance Fund (PSTEAF). KRS 224.10-100(28) authorizes the cabinet to  
15 promulgate administrative regulations not inconsistent with the provisions of law administered by  
16 the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to  
17 implement the requirements for financial responsibility of petroleum storage tank owners or  
18 operators. This administrative regulation establishes procedures to administer the PSTEAF,  
19 payment for third-party claims, financial audits, eligible company and partnership certification,  
20 laboratory certification, and facility ranking.

1 Section 1. Applicability. (1) This administrative regulation establishes the eligibility  
2 requirements and procedures for a petroleum storage tank owner or operator to make application,  
3 become an eligible applicant, and receive reimbursement from the cabinet for the cost of corrective  
4 action due to a release from a petroleum storage tank~~[- Federal and state owned facilities shall not  
5 be eligible for reimbursement from the PSTEAF].~~

6 (2) Federal-owned facilities shall not be eligible for reimbursement from the PSTEAF in  
7 accordance with KRS 224.60-115(16).

8 (3) Eligible reimbursement for actions directed by the Underground Storage Tank (UST)  
9 Branch prior to October 6, 2011 shall be made in accordance with the reimbursement  
10 administrative regulations in effect at the time work was performed[401 KAR Chapter 42 in effect  
11 prior to October 6, 2011].

12 Section 2. Application for Assistance for Reimbursement. (1) A petroleum storage tank  
13 owner or operator seeking reimbursement from~~[either]~~ the Financial Responsibility Account  
14 (FRA) or the Petroleum Storage Tank Account (PSTA), shall:

15 (a) Submit to the UST Branch, a complete and accurate, UST Facility Registration, DWM  
16 4225~~[Have a Certificate of Registration and Reimbursement Eligibility]~~, in accordance with 401  
17 KAR 42:020~~], or a Certificate of Eligibility, issued prior to September 13, 2006, which indicates~~  
18 ~~that the petroleum storage tank owner or operator is eligible to participate in the Petroleum Storage~~  
19 ~~Tank Environmental Assurance Fund for the associated UST Facility];~~

20 (b) Complete and submit a UST Application for Assistance for PSTEAF, DWM 4282,  
21 including all required attachments;

22 (c) Enter into and submit,~~[Apply for assistance.~~

1           1. ~~A petroleum storage tank owner or operator seeking reimbursement, who has not~~  
2 ~~submitted an Application for Assistance, shall submit a completed Application for Assistance,~~  
3 ~~DEP 6063, including all required attachments.~~

4           2. ~~A petroleum storage tank owner or operator shall certify in the Application for~~  
5 ~~Assistance that:~~

6           a.(i) ~~a contract[has been entered into and submitted]~~ in accordance with Section 3 of this  
7 administrative regulation;

8           ~~(d)1. Document that[and~~

9           ~~(ii)] a release requiring corrective action from an eligible facility has occurred [and has~~  
10 ~~been reported to the cabinet]; or~~

11           ~~2[b]. Receive a written directive from the UST[Underground Storage Tank] Branch[has~~  
12 ~~been issued for the performance of a site check], in accordance with 401 KAR 42:060[42:050];~~  
13 and

14           ~~(e) Subrogate the rights to recover those costs of corrective action, for which the cabinet~~  
15 ~~has compensated the person seeking reimbursement, from the person responsible or liable for the~~  
16 ~~release in accordance with KRS 224.60-140(14)(c)[(e) Provide a written notice, in accordance with~~  
17 ~~401 KAR 42:070, to the applicable regional office at least fourteen (14) calendar days prior to~~  
18 ~~commencement of the permanent closure of the petroleum storage tank to maintain eligibility for~~  
19 ~~reimbursement].~~

20           (2) If an application for assistance is found deficient by the UST[Underground Storage  
21 Tank] Branch, a written correspondence~~[deficiency letter]~~, outlining the deficiencies, shall be  
22 issued to the applicant.

1 (a) Failure by the applicant to provide the requested information and documentation within  
2 thirty (30) days of receipt of the request shall cause the application for assistance to be denied.

3 (b) ~~[If an extension beyond the thirty (30) days is necessary, the extension request shall be~~  
4 ~~submitted in writing to the Underground Storage Tank Branch prior to the deadline.~~

5 (e) Denial of the application for assistance shall not prevent the petroleum storage tank  
6 owner or operator from reapplying if the requested documentation becomes available.

7 (3) If the applicant meets the requirements of subsection (1) of this section, the  
8 UST[Underground Storage Tank] Branch shall:

9 (a) determine the eligibility of the applicant to receive reimbursement from either the FRA  
10 or PSTA, in accordance with Section 4, and shall issue a written approval of ~~[Financial~~  
11 ~~Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this~~  
12 ~~administrative regulation; and~~

13 (b) ~~Approve~~] the application for assistance.

14 (4) Reimbursement in accordance with ~~[pursuant to]~~ an approved application for assistance  
15 shall be restricted to:

16 (a) Actions directed in writing by the UST[Underground Storage Tank] Branch; and

17 (b) The reimbursement provisions established in Section 3.13 of the UST PSTEAF  
18 Reimbursement Rates, initial and immediate response ~~[abatement]~~ actions taken at a facility ~~[in~~  
19 ~~accordance with Section 2 of the Release Response and Initial Abatement Requirements Outline,~~  
20 ~~incorporated by reference in 401 KAR 42:060, subject to the reimbursement provisions of Section~~  
21 ~~2.14 of the Contractor Cost Outline,]~~ prior to a written directive from the UST[Underground  
22 Storage Tank] Branch, and not declared an environmental emergency by the cabinet;

1 (5) If the petroleum storage tank owner or operator seeking reimbursement from the  
2 PSTEAF changes and the new petroleum storage tank owner or operator assumes responsibility  
3 for the compliance with 401 KAR Chapter 42, the new petroleum storage tank owner or operator  
4 shall:

5 (a) Submit an amended UST Facility Registration, DWM 4225[Form, DEP 7112], in  
6 accordance with 401 KAR 42:020, Section 2(4)[4] indicating a change in petroleum storage tank  
7 owner or operator; and

8 (b) Submit an amended UST Application for Assistance for PSTEAF, DWM 4282[  
9 DEP6063], including all required attachments, within thirty (30) days of the transfer of the facility  
10 or petroleum storage tank.

11 (6) To maintain eligibility for participation in and reimbursement from the PSTEAF, the  
12 petroleum storage tank owner or operator shall maintain compliance with the requirements of this  
13 administrative regulation.

14 Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract  
15 from an[the] eligible company or partnership to be eligible for reimbursement from the cabinet for  
16 the performance of corrective action or site check activities at[for] a facility.

17 (2) In accordance with KRS 224.60-130(1)(a), an eligible company or partnership shall not  
18 require payment from an applicant in an amount greater than the reimbursable amount.

19 (3) The contract shall be executed prior to commencing corrective action or site check  
20 activities.

21 (4)[(3)] If a contract is revised, a copy of the revised contract shall be submitted to the  
22 UST[Underground Storage Tank] Branch within thirty (30) days of the revised contract execution.

23 (5)[(4)] If a contract is terminated and a new contract is executed:

1 (a) ~~[A notarized Affidavit of Termination of Contract, DEP 0061 by]~~ The petroleum storage  
2 tank owner or operator approved for PSTEAF reimbursement shall submit a notarized UST  
3 Affidavit of Termination of Contract, DWM 4280,~~[be submitted]~~ to the UST~~[Underground Storage~~  
4 ~~Tank]~~ Branch; and

5 (b) A copy of the newly executed contract shall be submitted to the UST~~[Underground~~  
6 ~~Storage Tank]~~ Branch within thirty (30) days of contract execution, and prior to commencing  
7 corrective action or site check activities.

8 Section 4. Account Placement. (1) Within the FRA, a petroleum storage tank owner or  
9 operator shall be eligible to receive reimbursement for corrective action costs, site check~~[checks]~~  
10 activities directed in writing by the UST~~[Underground Storage Tank]~~ Branch after September 13,  
11 2006 that do not confirm contamination above applicable screening levels, and third-party claims  
12 in accordance with Section 12~~[401 KAR 42:300],~~ incurred on or after April 9, 1990,~~[from the~~  
13 ~~Financial Responsibility Account]~~ if the petroleum storage tank owner or operator has satisfied the  
14 following requirements:

15 (a) Registered the petroleum storage tanks with the UST~~[Underground Storage Tank]~~  
16 Branch, in accordance with 401 KAR 42:020, prior to the release requiring corrective action or  
17 site check activities;

18 (b) ~~[Received a Certificate of Registration and Reimbursement Eligibility for the petroleum~~  
19 ~~storage tanks, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior to September~~  
20 ~~13, 2006 prior to the release requiring corrective action or site check activities;~~

21 ~~(c)]~~ Maintained UST system release detection as required by 401 KAR 42:020~~[42:040].~~ A  
22 petroleum storage tank permanently or temporarily closed in accordance with 401 KAR

1 ~~42:060~~~~[42:070]~~, shall have been in~~[maintained]~~ compliance with UST system release detection  
2 requirements prior to the permanent or temporary closure of the system;

3 (c)~~[(d)]~~ Maintained corrosion protection for the petroleum storage tank system in  
4 accordance with 401 KAR ~~42:020~~~~[42:030 and 42:070]~~;

5 (d)~~[(e)]~~ Maintained overfill and spill prevention for the petroleum storage tank system in  
6 accordance with 401 KAR ~~42:020~~~~[42:030]~~ for those tanks in use~~[operation]~~ after December 22,  
7 1998;

8 (e)~~[(f)]~~ Reported the release to the cabinet in accordance with KRS ~~224.1-400(11)~~~~[224.01-~~  
9 ~~400]~~ and 401 KAR ~~42:060~~~~[42:050]~~;

10 (f)~~[(g)]~~ Performed initial abatement procedures as required by the UST Corrective Action  
11 Manual~~[Release Response and Initial Abatement Requirements Outline]~~, incorporated by  
12 reference in 401 KAR 42:060; and

13 (g)~~[(h)]~~ Submit to the cabinet~~[Filed]~~ a UST Notice of Intent to Permanently Close  
14 Underground Storage Tank System, DWM 4266~~[DEP 7114]~~, incorporated by reference in 401  
15 KAR ~~42:060~~~~[42:070]~~, if applicable~~[, with the cabinet to permanently close the petroleum storage~~  
16 ~~tank at the facility or to make a change in service in accordance with 401 KAR 42:070]~~.

17 (2) A petroleum storage tank owner or operator who is not eligible for participation in the  
18 FRA~~[Financial Responsibility Account]~~, shall be eligible for reimbursement from the Petroleum  
19 Storage Tank Account for corrective action costs, incurred on or after April 9, 1990, or site check  
20 activities directed in writing by the UST~~[Underground Storage Tank]~~ Branch after September 13,  
21 2006, that do not confirm contamination above applicable screening levels, if the petroleum  
22 storage tank owner or operator has registered the petroleum storage tanks with the UST Branch in  
23 accordance with 401 KAR 42:020~~[satisfied the following requirements:~~

1           ~~(a) Registered the petroleum storage tanks with the Underground Storage Tank Branch in~~  
2 ~~accordance with 401 KAR 42:020;~~

3           ~~(b) Filed a Notice of Intent to Permanently Close Underground Storage Tank System, DEP~~  
4 ~~7114, incorporated by reference in 401 KAR 42:070, with the cabinet to permanently close the~~  
5 ~~petroleum storage tanks at the facility, if applicable, or to make a change in service, if applicable,~~  
6 ~~in accordance with 401 KAR 42:070; and~~

7           ~~(c) Reported a release to the cabinet in accordance with KRS 224.01-400 and 401 KAR~~  
8 ~~42:050.~~

9           ~~(3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for third-~~  
10 ~~party coverage].~~

11           Section 5. Entry Level~~[to the Financial Responsibility Account and Petroleum Storage~~  
12 ~~Tank Account]~~. (1) For facilities with releases confirmed after September 13, 2006, a petroleum  
13 storage tank owner's or operator's entry level shall be equal to the financial responsibility  
14 requirement, as established in KRS 224.60-120(1), and shall be deducted from the eligible  
15 reimbursement except as provided in subsection (3) of this section.

16           (2) An entry level shall be assessed upon confirmation of a release, constituting an  
17 occurrence, that requires corrective action for which the applicant is seeking reimbursement  
18 through the FRA and PSTA~~[Financial Responsibility Account or Petroleum Storage Tank~~  
19 ~~Account]~~ in accordance with subsection (1) of this section, regardless of a petroleum storage tank  
20 owner's participation in the Small Owner Tank Removal Account (SOTRA) in accordance with  
21 401 KAR 42:330.

22           (3) The entry level shall not be deducted from the eligible reimbursement if the petroleum  
23 storage tank owner or operator performs:

1           (a) A site check[is] directed by the UST[Underground Storage Tank] Branch[to perform a  
2 site check,] in accordance with 401 KAR 42:060, that does not confirm contamination requiring  
3 further action in accordance with 401 KAR Chapter 42;

4           **(b) An initial and immediate response action in accordance with Section 3.13 of the UST**  
5 **PSTEAF Reimbursement Rates;**

6           **(c) Optional soil removal outside the excavation zone during permanent closure in**  
7 **accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in**  
8 **401 KAR 42:060;**

9           **(d) Transportation and disposal of excavated material contaminated above applicable**  
10 **screening levels within the excavation zone during permanent closure in accordance with 401 KAR**  
11 **42:060; or**

12           **(e) Transportation and disposal of pit water contaminated above applicable screening levels**  
13 **within the excavation zone during permanent closure in accordance with the UST Corrective**  
14 **Action Manual, incorporated by reference in 401 KAR 42:060.**

15           (4) Upon request by the petroleum storage tank owner or operator, the UST[Underground  
16 ~~Storage Tank]~~ Branch shall reimburse, upon final payment, twenty-five (25) percent of the entry  
17 level if the petroleum storage tank owner or operator has:

18           (a) Completed corrective action at the facility within:

19           1. 180 days from the discovery of the release, for soil contamination only; or

20           2. Twenty-four (24) months from the discovery of the release, for groundwater  
21 contamination only or both soil and groundwater contamination; and

22           (b) Been issued[Received] a no further action letter without additional measures being  
23 required for an occurrence associated with the submittal of an application for assistance.

1 (5) The applicable entry level shall be equal to the financial responsibility requirement as  
2 established~~[determined,]~~ in~~[accordance with]~~ KRS 224.60-120(1), based on the number of tanks  
3 owned by the petroleum storage tank owner or operator at the time of the occurrence associated  
4 with the submittal of an application for assistance.

5 Section 6. Newly Discovered UST~~[Underground Storage Tank]~~ Systems. (1) A newly  
6 discovered UST~~[underground storage tank]~~ system encountered at a facility during the  
7 performance of corrective action due to a release from a registered petroleum storage tank shall  
8 not affect a petroleum storage tank owner's or operator's account placement eligibility.

9 (2) The number of newly discovered tanks shall not increase the entry level of the  
10 petroleum storage tank owner or operator.

11 Section 7.~~[Procedures for]~~ Establishing the Reimbursable Amount for a Written  
12 Directive~~[issued by the Underground Storage Tank Branch]~~. (1) The reimbursable amount  
13 established for the completion of a written directive issued by the UST~~[Underground Storage~~  
14 ~~Tank]~~ Branch shall be based on~~[the following]~~:

15 (a) The formulated task rates established in Section 3.0~~[2.0]~~ of the UST PSTEAF  
16 Reimbursement Rates~~[Contractor Cost Outline]~~;

17 (b) For a specific task that does not have a formulated task rate in the UST PSTEAF  
18 Reimbursement Rates, a cost estimate shall be submitted by the owner or operator~~[, in accordance~~  
19 ~~with subsection (2) of this section, for a specific task, including applicable materials, that does not~~  
20 ~~have a formulated task rate in the Contractor Cost Outline; or~~

21 ~~(c) A combination of (a) and (b) of this subsection.~~

1           ~~(2) If directed in writing by the Underground Storage Tank Branch, a cost estimate shall~~  
2 ~~be submitted by the owner or operator, for a specific task that does not have a formulated task~~  
3 ~~rate]. The cost estimate shall:~~

4           ~~1.[(a)] Include a cost itemization to complete the individual task[for which a formulated~~  
5 ~~task rate has not been established if the task is being completed by the eligible company or~~  
6 ~~partnership or by a subcontractor which shall be calculated] using those personnel and equipment~~  
7 ~~rates established in Section 5.0 of the UST PSTEAF Reimbursement Rates[3 of the Contractor~~  
8 ~~Cost Outline] applicable to individual components of the task;~~

9           ~~2.[(b)] Include three (3) bids from suppliers or manufactures of corrective action equipment~~  
10 ~~for individual equipment purchase or rental, exceeding \$3,000, containing a description of the~~  
11 ~~equipment to be purchased or rented provided by the supplier or manufacturer for new equipment~~  
12 ~~purchased;~~

13           ~~3.[(c)] Include an estimate for materials to be purchased[;~~

14           ~~(d) Be submitted on the Cost Estimate form, DEP 6090; and~~

15           ~~(e) Include the required supporting documentation identified within the Cost Estimate~~  
16 ~~form, DEP 6090].~~

17           (3) The UST[Underground Storage Tank] Branch shall establish the reimbursable amount  
18 in a written directive[;] based on the formulated task[applicable] rates established in the UST  
19 PSTEAF Reimbursement Rates[Contractor Cost Outline] and applicable, approved, cost  
20 estimates[the completed Cost Estimate form, DEP 6090, submitted, if applicable, establish the  
21 reimbursable amount in a written directive].

22           (4) The cabinet shall attach to the written directive[the following]:

23           (a) An itemization of the reimbursable amount; and

1 (b) A UST Claim Request for Directed Actions, DWM 4286.~~[The USTB Written Directive~~  
2 ~~Claim Request form, DEP 6091;]~~

3 (5) The issuance of a written directive by the UST~~[Underground Storage Tank]~~ Branch  
4 shall, subject to the provisions of Section 8~~[of this administrative regulation]~~, constitute an  
5 obligation and guarantee of payment of the reimbursable amount identified within a written  
6 directive, in accordance with KRS 224.60-140(5).

7 (6) Upon compliance with Section 8, the reimbursable amount established by the  
8 UST~~[Underground Storage Tank]~~ Branch in a written directive shall, as applicable and in  
9 accordance with the UST PSTEAF Reimbursement Rates~~[Contractor Cost Outline]~~, be adjusted  
10 as established in this subsection.~~[follows upon compliance by the eligible applicant with Section~~  
11 ~~8 of this administrative regulation;]~~

12 (a) The reimbursable amount for over-excavation identified in the written directive issued  
13 by the UST~~[Underground Storage Tank]~~ is an estimate of the tonnage to be removed and shall be  
14 based on the volume and density of material in the proposed excavation area. The  
15 UST~~[Underground Storage Tank]~~ Branch shall convert cubic yardage to tons using a density of  
16 one and one-half (1.5) tons per cubic yard. The reimbursable amount shall be adjusted based on:

17 1.a. The soil tonnage verified through the submittal of weigh tickets; or

18 b. If soil is disposed of at a permitted disposal facility incapable of providing weigh tickets,  
19 a calculation of the tonnage associated with the actual area and depth of over-excavation, not to  
20 exceed the tonnage estimate identified in the written directive from the UST~~[Underground Storage~~  
21 ~~Tank]~~ Branch; and

22 2. The reimbursement for the removal, transportation, and disposal of water encountered  
23 within the over-excavation shall be contingent upon analytical confirmation that contaminant

1 levels within the water exceed the applicable groundwater screening levels, and the reimbursable  
2 amount for water removed, transported, and disposed shall be based on the quantity of water  
3 disposed, as documented by disposal manifests and limited to one (1) pit volume;

4 (b) The reimbursable amount for a Mobile Dual-Phase~~[Dual-Phase]~~ Extraction Event  
5 identified in a written directive issued by the UST~~[Underground Storage Tank]~~ Branch shall be  
6 adjusted to include the amount of water disposed as documented by disposal manifests, or the  
7 amount of water verified by the eligible company or partnership as being treated on site;

8 (c) The reimbursable amount for Operation and Maintenance of an approved remediation  
9 system shall be adjusted to include the actual cost of utilities as documented by invoices submitted;

10 (d) If the UST~~[Underground Storage Tank]~~ Branch has not received and approved the UST  
11 Application for Assistance for PSTEAF, DWM 4282~~[DEP-6063]~~, prior to the issuance of the  
12 written directive, the reimbursable amount identified in the written directive issued shall not  
13 include the applicable formulated task rates for mobilization, per diem and field equipment cost.  
14 The UST~~[Underground Storage Tank]~~ Branch shall add the applicable formulated task rates for  
15 mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in  
16 accordance with the UST PSTEAF Reimbursement Rates,~~[Contractor Cost Outline]~~ once an  
17 approved UST Application for Assistance for PSTEAF, DWM 4282, is submitted;

18 (e) If the UST~~[Underground Storage Tank]~~ Branch has not received a signed contract  
19 between the eligible applicant and the eligible company or partnership prior to the issuance of the  
20 written directive, the reimbursable amount identified in the written directive issued shall not  
21 include the applicable formulated task rates for mobilization, per diem, and field equipment cost.  
22 The UST~~[Underground Storage Tank]~~ Branch shall add the applicable formulated task rates for  
23 mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in

1 accordance with the UST PSTEAF Reimbursement Rates~~[Contractor Cost Outline]~~, once the  
2 requirements of Section 3~~[of this administrative regulation]~~ are met;

3 (f) If a written directive issued by the UST~~[Underground Storage Tank]~~ Branch cannot be  
4 complied with to the extent necessary to achieve a technically complete determination by the  
5 UST~~[Underground Storage Tank]~~ Branch, in accordance with the 401 KAR 42:060~~[Corrective~~  
6 ~~Action Outline]~~, for reasons beyond the control of the applicant, or~~[and]~~ eligible company or  
7 partnership, the previously approved reimbursable~~[reimbursement]~~ amount established in the  
8 written directive shall, unless~~[otherwise]~~ addressed in the written directive, be adjusted by the  
9 UST~~[Underground Storage Tank]~~ Branch, with reference to the UST PSTEAF Reimbursement  
10 Rates~~[Contractor Cost Outline]~~ and the applicable, approved cost estimate~~[submitted on the Cost~~  
11 ~~Estimate form, DEP 6090, as applicable]~~, to deduct the cost of actions not completed; or

12 (g)~~[If a written directive issued by the Underground Storage Tank Branch cannot be~~  
13 ~~completed, based upon omissions, misrepresentations, or otherwise inaccurate information~~  
14 ~~submitted by the eligible company or partnership in a previous report, the reimbursable amount~~  
15 ~~identified in the written directive shall be adjusted to deduct those actions directed based upon~~  
16 ~~omissions, misrepresentations, or otherwise inaccurate information submitted; or~~

17 (h) If the UST~~[Underground Storage Tank]~~ Branch rescinds an issued~~[a]~~ written  
18 directive~~[issued,]~~ prior to the completion of the entire scope of work identified in the written  
19 directive, the previously approved reimbursement amount shall be adjusted to reflect the cost of  
20 actions completed, with reference to the UST PSTEAF Reimbursement Rates~~[Contractor Cost~~  
21 ~~Outline]~~ and the approved cost estimate~~[submitted]~~, if applicable.

22 (7) Reimbursement for an individual corrective action equipment purchase or rental shall  
23 not include markup and shall be limited to:

1 (a) The original purchase price provided by the supplier or manufacturer, including  
2 applicable sales tax, if purchased; or

3 (b) Rental costs not exceeding the purchase price provided by the supplier or manufacturer,  
4 if rented.

5 (8) The UST Branch shall have final authority to determine all reimbursable actions  
6 including site characterization and corrective action technologies in accordance with 401 KAR  
7 42:060[Costs incurred prior to issuance of a written directive by the Underground Storage Tank  
8 Branch in accordance with this section shall be ineligible for reimbursement].

9 Section 8. Reimbursement[~~Procedures~~] for a Written Directive[~~issued by the Underground~~  
10 ~~Storage Tank Branch~~]. (1) Reimbursement for a written directive shall be made after the following  
11 actions are completed:

12 (a) The submittal and approval of a UST[an] Application for Assistance for PSTEAF,  
13 DWM 4282[DEP 6063], in accordance with Section 2[of this administrative regulation];

14 (b) The UST[USTB] Claim Request for Directed Actions, DWM 4286, which includes  
15 payment verification affidavit as required by KRS 224.60-140(18),[Written Directive Claim  
16 Request Form, DEP 6091, which was] provided with the written directive has been completed,  
17 signed, and submitted to the UST[Underground Storage Tank] Branch;

18 (c)[~~The Payment Verification Affidavit Form, DEP 6075, as required by KRS 224.60-~~  
19 ~~140(18);~~

20 (d) The UST Payment Waiver[form], DWM 4289[DEP 6077], executed by each affected  
21 vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

1           (d)[(e)] The submittal of weigh tickets and invoices documenting the actual cost of items  
2 that do not have a formulated task rate established in the UST PSTEAF Reimbursement  
3 Rates[utilities] or other required backup documentation as indicated in the written directive;

4           (e)[(f)] The technical report submitted in response to the written directive is determined by  
5 the UST[Underground Storage Tank] Branch to be technically complete in accordance  
6 with[relation to] the written directive and 401 KAR 42:060[Chapter 42]; and

7           (f)[(g)] Payment has been received for all applicable annual[registration] fees in  
8 accordance with KRS 224.60-150 and Section 2 of 401 KAR 42:020[42:200].

9           (2) Reimbursement shall be contingent upon the contracted eligible company or partnership  
10 meeting and maintaining the requirements established in accordance with Section 19[401 KAR  
11 42:316].

12           (3) Reimbursement shall be contingent upon a certified laboratory performing the required  
13 analysis in accordance with Section 20[401 KAR 42:340].

14           (4) If the contract with the eligible company or partnership designated on a written directive  
15 is terminated prior to the commencement of reimbursable activities in response to the written  
16 directive, the obligation and guarantee of payment of the reimbursable amount, made in  
17 accordance with KRS 224.60-140(5), shall be void.

18           (5) The information completed by the UST[Underground Storage Tank] Branch on the  
19 UST Claim Request for Directed Actions, DWM 4286[USTB Written Directive Claim Request  
20 form, DEP 6091], attached to the written directive, shall not be modified by the applicant or the  
21 eligible company or partnership designated on the written directive.

1           (6) If the applicant fails to correct a claim related deficiency or to supply additional claim  
2 information, within thirty (30) days of written notice from the UST Branch, that portion of the  
3 claim shall be denied.

4           (7) The UST[~~Underground Storage Tank~~] Branch shall issue a determination in accordance  
5 with[~~pursuant to~~] KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible  
6 for reimbursement.

7           (8)[~~(7)~~] All claims shall be submitted within two (2) years after issuance of a no further  
8 action letter by the UST[~~Underground Storage Tank~~] Branch, in accordance with KRS 224.60-  
9 130(1)(n).

10           (9)[~~(8)~~] If a request to re-evaluate the reimbursable amount, established in accordance with  
11 Section 7[~~of this administrative regulation~~], is submitted in accordance with Section 14, and a not-  
12 to-exceed amount is warranted, final reimbursement shall be made on a time and material basis,  
13 which shall require the following supporting documentation:

14           (a) An itemization of the eligible company or partnership invoice with supporting  
15 documentation;

16           (b) Itemized subcontractor and vendor invoices with supporting documentation; and

17           (c) Time sheets to support all personnel time billed for the completion of the scope of work  
18 identified in the written directive.

19           Section 9. Reimbursement for[~~Procedures for Reimbursable~~] Actions[~~that are~~] Not  
20 Directed in Writing[~~by the Underground Storage Tank Branch~~]. (1) Reimbursement shall be made  
21 for the following actions,[~~which shall not require written directives from the Underground Storage~~  
22 ~~Tank Branch or cost estimates from the applicant and eligible company or partnership,~~] in

1 accordance with the applicable formulated task rates established in the UST PSTEAF  
2 Reimbursement Rates.~~[Contractor Cost Outline];~~

3 (a) Optional Soil Removal Outside the Excavation Zone at permanent closure, in  
4 accordance with Section 4.16~~[6]~~ of the UST Corrective Action Manual~~[Closure Outline]~~  
5 incorporated by reference in 401 KAR 42:060.~~[42:070];~~

6 (b) Transportation and disposal, treatment, or recycling of contaminated material or water  
7 at a permitted facility, removed from within the excavation zone, contaminated above applicable  
8 screening levels, at permanent closure, in accordance with the UST Corrective Action  
9 Manual~~[Closure Outline]~~ incorporated by reference in 401 KAR 42:060.~~[42:070];~~

10 (c) Initial and immediate response actions, identified in Section 3.13~~[2-14]~~ of the UST  
11 PSTEAF Reimbursement Rates~~[Contractor Cost Outline]~~, taken at a facility~~;~~ in accordance with  
12 Section 2.0~~[2]~~ of the UST Corrective Action Manual~~[Release Response and Initial Abatement~~  
13 Requirements Outline], incorporated by reference in 401 KAR 42:060, prior to a written directive  
14 from the UST~~[Underground Storage Tank]~~ Branch or prior to the date of a declared environmental  
15 emergency by the cabinet.~~;~~

16 (d) Transportation and disposal of drums containing purged water or soil cuttings  
17 associated with actions directed in accordance with 401 KAR 42:060.~~;~~

18 (e) Encroachment permit renewals necessary to complete directed actions.~~;~~~~and]~~

19 (f) Unscheduled maintenance of a remediation system installed in accordance with ~~[an]~~  
20 approved corrective action activities and~~[Plan, in accordance with]~~ Section 3.12~~[2-13]~~ of the UST  
21 PSTEAF Reimbursement Rates~~[Contractor Cost Outline, and invoices supporting the cost of~~  
22 necessary materials or equipment not exceeding a total cost of \$3,000, but shall not include  
23 unscheduled maintenance equipment costs covered by equipment warranty]. Pre-approval is

1 required for one (1) unscheduled maintenance event that will exceed \$3,000 for material and~~[or]~~  
2 equipment [costs associated with unscheduled maintenance of a remediation system exceeding  
3 \$3,000 shall require pre-approval before work is performed].

4 (2) Reimbursement shall be made after the following actions are completed:

5 (a) The~~[submittal and]~~ approval of a UST[an] Application for Assistance for PSTEAF,  
6 DWM 4282[DEP 6063], in accordance with Section 2~~[of this administrative regulation];~~

7 (b) The UST Claim Request[Form] for Actions Not Directed, DWM 4285, which includes  
8 payment verification affidavit as required by KRS 224.60-140(18)[By The USTB, DEP 6064], has  
9 been completed, signed, and submitted to the UST[Underground Storage Tank] Branch;

10 (c)~~[The Payment Verification Affidavit form, DEP 6075, as required by KRS 224.60-~~  
11 140(18);

12 (d) The UST Payment Waiver [form], DWM 4289[DEP 6077], executed by each affected  
13 vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

14 (d)~~[(e)]~~ The submittal of required backup documentation as identified on the instruction  
15 sheet associated with each worksheet;

16 (e)~~[(f)]~~ Payment has been received for all applicable annual~~[registration]~~ fees in accordance  
17 with KRS 224.60-150[224.60-10] and Section 2 of 401 KAR 42:020[42:200];

18 (f)~~[(g)]~~ The UST Optional Soil Removal at Permanent Closure[Outside the Excavation  
19 Zone] Reimbursement Worksheet, DWM 4288[DEP 6094], has been completed and submitted to  
20 the UST[Underground Storage Tank] Branch for optional soil removal outside of the excavation  
21 zone at permanent closure in accordance with 401 KAR 42:060[42:070] for actions listed in  
22 subsection (1)(a) of this section, if applicable[performed];

1 (g)~~(h)~~ The UST Miscellaneous Tasks Worksheet, DWM 4287~~[DEP-6093]~~, has been  
2 completed and submitted to the UST~~[Underground Storage Tank]~~ Branch for actions listed in  
3 subsection (1)(b), (c), (d), (e) or (f) of this section, if applicable~~[performed]~~; and

4 (h)~~(i)~~ The technical report submitted in accordance to subsections~~[for subsection]~~ (1)(a),  
5 (b), or (c) of this section has been deemed~~[is]~~ technically complete, if applicable, in accordance  
6 with 401 KAR Chapter 42.

7 (3) Reimbursement shall be contingent upon the contracted eligible company or partnership  
8 meeting and maintaining the requirements established in accordance with Section 19~~[401 KAR~~  
9 ~~42:316]~~.

10 (4) Reimbursement shall be contingent upon a certified laboratory performing the required  
11 analysis in accordance with Section 20~~[401 KAR 42:340]~~.

12 (5) The UST~~[Underground Storage Tank]~~ Branch may require additional information and  
13 documentation to determine that a an eligible request for reimbursement is reasonable and  
14 necessary~~[and reasonable]~~.

15 (6) If the applicant fails to correct a claim related~~[claim-related]~~ deficiency, or to supply  
16 additional claim information, within thirty (30) days of written notice from the UST~~[Underground~~  
17 ~~Storage Tank]~~ Branch, that portion of the claim shall be denied.

18 (7) The UST~~[Underground Storage Tank]~~ Branch shall issue a determination, in  
19 accordance with~~[pursuant to]~~ KRS 224.60-140(7), as to whether~~[the]~~ the eligibility for reimbursement  
20 of the costs submitted in the claim ~~[are eligible for reimbursement]~~.

21 (8) All claims shall be submitted within two (2) years after issuance of a no further action  
22 letter by the UST~~[Underground Storage Tank]~~ Branch in accordance with KRS 224.60-130(1)(n).

1           Section 10.~~[Reimbursement Procedures for]~~ Facility Restoration. (1) The UST Branch  
2 shall issue a written directive in accordance Section 7, when the applicant provides the information  
3 in Section 5.9.2 in the UST Corrective Action Manual, incorporated by reference in 401 KAR  
4 42:060~~[An itemized cost estimate shall be submitted to the Underground Storage Tank Branch on~~  
5 ~~the Facility Restoration Worksheet, DEP-6095, for the completion of facility restoration actions].~~

6           (2) If the UST Branch does not issue a written directive in accordance with subsection (1),  
7 the applicant may submit an obligation request to the cabinet, with the information outlined in  
8 Section 5.9.2 of the UST Corrective Action Manual, for the completion of facility restoration  
9 actions~~[Written approval, by the Underground Storage Tank Branch, of the cost estimate shall~~  
10 ~~constitute, subject to adjustment in accordance with subsection (4) of this section, an obligation~~  
11 ~~and guarantee of payment, in accordance with KRS 224.60-140(5), for the cost of actions that are~~  
12 ~~completed in full].~~

13           (3) Reimbursement for facility restoration activities shall be made in accordance with  
14 Section 8~~[Costs incurred prior to the written approval of the cost estimate by the Underground~~  
15 ~~Storage Tank Branch shall be ineligible for reimbursement].~~

16           ~~[(4) Upon the completion of site restoration actions, final reimbursement shall be based on~~  
17 ~~the costs identified through the submittal of the Facility Restoration Worksheet, DEP-6095, that~~  
18 ~~identified the actual work completed.~~

19           ~~(5) Reimbursement for facility restoration actions involving the replacement of surface~~  
20 ~~material shall be limited to costs necessary for the replacement of surface material removed during~~  
21 ~~corrective action activities.~~

22           ~~(6) Reimbursement for site restoration activities shall be made after the following actions~~  
23 ~~are completed:~~

1           ~~(a) The submittal and approval of an Application for Assistance, DEP 6063, in accordance~~  
2 ~~with Section 2 of this administrative regulation;~~

3           ~~(b) The Claim Request Form For Actions Not Directed by the USTB, DEP 6064, has been~~  
4 ~~completed, signed, and submitted to the Underground Storage Tank Branch;~~

5           ~~(c) The Payment Verification Affidavit form, DEP 6075, as required by KRS 224.60-~~  
6 ~~140(18);~~

7           ~~(d) The Payment Waiver form, DEP 6077, executed by each affected vendor or~~  
8 ~~subcontractor, as applicable, in accordance with KRS 224.60-140(18);~~

9           ~~(e) The Facility Restoration Worksheet, DEP 6095, has been completed and submitted,~~  
10 ~~with the required documentation, to the Underground Storage Tank Branch; and~~

11           ~~(f) Payment has been received for all applicable annual registration fees in accordance with~~  
12 ~~KRS 224.60-150 and 401 KAR 42:200.~~

13           ~~(7) Reimbursement shall be contingent upon the contracted eligible company or partnership~~  
14 ~~meeting and maintaining the requirements of 401 KAR 42:316.~~

15           ~~(8) The Underground Storage Tank Branch may require additional information and~~  
16 ~~documentation to determine that an eligible request for reimbursement is necessary and reasonable.~~

17           ~~(9) If the applicant fails to correct a claim related deficiency or to supply additional claim~~  
18 ~~information within thirty (30) days of written notice from the Underground Storage Tank Branch,~~  
19 ~~that portion of the claim shall be denied.~~

20           ~~(10) The Underground Storage Tank Branch shall issue a determination pursuant to KRS~~  
21 ~~224.60-140(7) as to if the costs submitted in the claim are eligible for reimbursement.~~

22           ~~(11) All claims shall be submitted within two (2) years after issuance of a no further action~~  
23 ~~letter by the Underground Storage Tank Branch.]~~

1           Section 11. ~~Payment~~[Reimbursement] for Actions Directed~~[and Documented]~~ by the  
2 Environmental Response Branch~~[during a Declared Environmental Emergency]~~.  
3 Payment[Reimbursement] for actions directed and documented by the Environmental Response  
4 Branch during a declared environmental emergency shall not be governed by this administrative  
5 regulation and shall be made in accordance with KRS Chapter 224 and procedures established by  
6 the cabinet.

7           Section 12. Third-Party Claims. (1) An eligible third-party claim shall be limited to bodily  
8 injury and property damage, asserted against an owner or operator as a result of sudden or non-  
9 sudden accidental releases into the environment from a petroleum storage tank at a facility eligible  
10 for participation in the FRA.

11           (2) A petroleum storage tank owner or operator shall be eligible to apply for reimbursement  
12 or payment for a third-party claim if:

13           (a) The cabinet has approved an application for assistance; and

14           (b) The owner or operator has maintained compliance with the eligibility requirements for  
15 participation in the FRA in effect at the time the application for assistance was approved.

16           (3) If a petroleum storage tank owner or operator receives a written notice from the cabinet  
17 indicating noncompliance with the eligibility of the FRA in accordance with Section 4, the  
18 petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of  
19 third-party claims brought against the petroleum storage tank owner or operator within sixty (60)  
20 days from the date of the written notice.

21           (4) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner  
22 or operator shall:

23           (a) Submit a new UST Application for Assistance for PSTEAF, DWM 4282; and

1           (b) Notify the cabinet of the assertion of the third-party claim within twenty-one (21) days  
2 of service of process of an action against the owner or operator by the third party, or the receipt of  
3 an assertion of a claim in writing by a third party.

4           (5) A third-party claim shall be paid on the basis of:

5           (a) A final and enforceable judgment; or

6           (b) A written agreement between a third party and the owner or operator, upon review and  
7 concurrence by the cabinet.

8           (6)(a) A settlement of a third-party claim shall not be made by an owner or operator without  
9 the prior approval of the cabinet.

10           (b) The cabinet shall not pay a third-party judgment, or reimburse an owner or operator for  
11 payment of the judgment, in an amount exceeding a settlement offer rejected by the owner or  
12 operator if the settlement offer was:

13           1. Not submitted to the cabinet for consideration; or

14           2. Previously approved by the cabinet.

15           (7) Claim payment shall be limited to actual, documented, bodily injury and property  
16 damage caused by the release of petroleum.

17           (a) A claim for bodily injury and property damage shall be paid to the extent that the  
18 damages are not addressed by the performance of corrective action.

19           (b) The aggregate amount of payment of all third-party claims shall not exceed \$1,000,000  
20 per occurrence.

21           1. Claim requests shall be submitted on the UST Third-Party Claim, DWM 4292;

22           2. The applicant shall retain a copy of the completed form for his or her records.

1           (c) The cabinet shall acquire by subrogation the right of the third-party to recover, from the  
2 person responsible or liable for the release, the amount of damages paid to the third-party.

3           (d) Reimbursement for third-party claims shall be made in accordance with Section 21.

4           (e) Payment of the third-party claim shall be made after approval by the cabinet.

5           Section 13. Eligible and Ineligible Costs. (1) Eligible costs for regulated petroleum storage  
6 tanks containing motor fuel shall include:

7           (a) Initial and immediate response actions taken outside of the excavation zone, in  
8 accordance with Section 2.0 of the UST Corrective Action Manual, incorporated by reference in  
9 401 KAR 42:060, prior to a written directive from the UST Branch or prior to the date of a declared  
10 emergency by the cabinet[~~Tank and Line Tightness Testing as requested in writing by the~~  
11 ~~Underground Storage Tank Branch in conjunction with Site Check, Site Investigation, or~~  
12 ~~Corrective Action activities for a facility];~~

13           (b) Site checks at a facility, upon a written directive issued after September 13, 2006, by  
14 the UST[~~Underground Storage Tank~~] Branch;

15           (c) ~~Tank and line tightness testing as requested in writing by the UST Branch in conjunction~~  
16 ~~with site check, site investigation, or corrective action activities for a facility;~~

17           (d) Performance of corrective action as defined in KRS 224.60-115(4), due to a release of  
18 motor fuel from a regulated petroleum storage tank system, upon written direction by the  
19 UST[~~Underground Storage Tank~~] Branch;

20           (e)[~~(d)~~] Transportation, disposal[~~;~~] or treatment at a permitted facility, and replacement of  
21 ~~excavated[backfill] material,[excluding the tank volume,] contaminated above applicable~~  
22 screening levels;

1           1. Within the excavation zone,~~;~~ excluding the tank volume, in accordance with Section  
2 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; or

3           2. Outside the excavation zone, in accordance with Section 4.16 of the UST Corrective  
4 Action Manual, incorporated by reference in 401 KAR 42:060.

5           (f)~~(e)~~ Transportation and disposal, treatment, or recycling, at a permitted facility, of free  
6 product or water, contaminated above screening levels encountered;

7           1. Within the excavation zone, during~~[permanent closure]~~ activities in accordance with  
8 Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR  
9 42:060~~[42:070, or as directed in writing by the Underground Storage Tank Branch for those~~  
10 facilities currently performing corrective action activities in accordance with 401 KAR 42:060];

11           2. During activities in accordance with Section 4.16 of the UST Corrective Action Manual,  
12 incorporated by reference in 401 KAR 42:060.

13           (g) A fifteen (15) percent total markup above the cost of materials purchased associated  
14 with a task for which there is not a formulated task rate established in the UST PSTEAF  
15 Reimbursement Rates;

16           (h) An eligible company or partnership that employs an unaffiliated subcontractor or other  
17 vendor shall receive a fifteen (15) percent markup for costs that do not have a formulated task rate  
18 established in the UST PSTEAF Reimbursement Rates;

19           (i)~~(f) The cost of~~ Surface material to replace removed or damaged~~[replacement for~~  
20 excavated] areas directly associated with corrective action activities, upon written direction by the  
21 UST Branch;

22           ~~(g) Initial response actions taken outside of the excavation zone, in accordance with~~  
23 Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by

1 ~~reference in 401 KAR 42:060, prior to a written directive from the Underground Storage Tank~~  
2 ~~Branch or prior to the date of a declared emergency by the cabinet;]~~ and

3 (j)~~(h)~~ Other costs, associated with corrective action activities, as identified in a written  
4 directive issued by the UST~~[Underground Storage Tank]~~ Branch for the facility.

5 (2) Ineligible costs for regulated petroleum storage tanks containing motor fuel shall  
6 include:

7 (a) Except as established in subsection (1) of this section, costs incurred prior to the written  
8 approval by the UST Branch;

9 (b) Costs incurred for the purpose of meeting the requirements of 401 KAR 42:020;

10 (c) Replacement, repair, maintenance, or retrofitting of tanks or piping;

11 ~~(d)(b) Out-of-state travel expense, including air fare;~~

12 ~~(e) Loss of business, income or profits;~~

13 ~~(d) An attorney fee related to:~~

14 ~~1. Judicial or administrative litigation;~~

15 ~~2. Consultation on administrative regulations;~~

16 ~~3. Preparation or submittal of documentation related to reimbursement process; or~~

17 ~~4. Other legal services determined by the Underground Storage Tank Branch not to be~~  
18 ~~integral to the performance of corrective action.~~

19 ~~(e) Decreased property values for the facility;~~

20 ~~(f) Facility improvements, including costs to upgrade the facility;~~

21 ~~(g) An aesthetic improvement to the facility;~~

22 ~~(h) The cost of surface material replacement for areas not removed as part of corrective~~  
23 ~~action;~~

- 1           ~~(i) Payment of the owner or operator's personnel for overtime or for staff time in planning~~  
2 ~~or implementing corrective action as defined in KRS 224.60-115(4);~~
- 3           ~~(j) Interest on an overdue account or loan;~~
- 4           ~~(k) A cost covered by insurance payable to the owner or operator;~~
- 5           ~~(l) A contractor surcharge implemented because the owner or operator failed to act in a~~  
6 ~~timely fashion;~~
- 7           ~~(m) Work performed that is not in compliance with safety codes;]~~
- 8           ~~(n)] A cost associated with a release from a storage tank exempt from requirements of 401~~  
9 ~~KAR Chapter 42 as established in KRS 224.60;~~
- 10           ~~(e)](o) Contractor markup expense for a normally expected overhead item or in-stock~~  
11 ~~material;~~
- 12           ~~(p) Contractor markup expense for personnel cost;~~
- 13           ~~(q) A laboratory "rush" fee, unless directed by the Underground Storage Tank Branch;~~
- 14           ~~(r)] A cost or cost recovery for governmental emergency services;~~
- 15           ~~(f)](s) Corrective action activities subsequent to the issuance of a no further action letter,~~  
16 ~~unless otherwise directed in writing by the Underground Storage Tank Branch;~~
- 17           ~~(t) Reimbursement for work or a portion of work performed at a facility if the results of~~  
18 ~~laboratory analysis do not confirm the need for corrective action or for actions to achieve more~~  
19 ~~stringent allowable levels than those prescribed by the cabinet, except for investigatory or~~  
20 ~~corrective actions otherwise directed from the Underground Storage Tank Branch in writing;~~
- 21           ~~(u)] A cost of a party employed to act as a surrogate or stand-in for the owner or operator~~  
22 ~~of the facility;~~

1           (g)(v) Preparation of documentation, cost estimates, written agreements, contracts or  
2 client invoices that will be submitted to the UST[Underground Storage Tank] Branch for  
3 reimbursement purposes;

4           (h)(w) Except as provided in 401 KAR 42:330, costs[cost] related to the removal, or  
5 actions incidental to the removal of a tank system;

6           (i) Road mileage beyond 1,000 miles round trip;

7           (j) Reimbursement for work or a portion of work, performed at a facility if the results of  
8 laboratory analysis do not confirm the need for corrective action, or for actions to achieve  
9 contaminant concentrations less than those directed by the cabinet, except for investigatory or  
10 corrective actions directed from the UST Branch in writing;

11           (k) Work performed that is not in compliance with safety codes;

12           (l)(x) ~~Cost of resampling and laboratory tests performed as a result of an operational or~~  
13 ~~methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become~~  
14 ~~certified or accredited under the requirements of KRS 224.60-130(1)(a) and 401 KAR 42:340;~~

15           (y) ~~Costs relating to compliance with a local program having corrective action standards~~  
16 ~~more stringent than those required by the cabinet;~~

17           (z) ~~Costs to achieve corrective action standards more stringent than those required by the~~  
18 ~~applicable administrative regulation;~~

19           (aa) ~~Actions resulting from contractor error or negligence;~~

20           (bb) ~~Costs covered by the contractor's liability insurance;~~

21           (cc) ~~Other services or costs determined by the Underground Storage Tank Branch to be an~~  
22 ~~unreasonable or unnecessary cost of corrective action;~~

1 ~~(dd) Overtime for individual personnel exceeding forty (40) hours during a standard~~  
2 ~~workweek;~~

3 ~~(ee) Free product recovery from monitoring wells or borings during corrective action~~  
4 ~~activities, unless directed in writing by the UST[Underground Storage Tank] Branch;~~

5 ~~(m)[(ff) Costs incurred for additional assessment or Corrective Action Plan modification~~  
6 ~~necessary as a result of delayed implementation of the Corrective Action Plan, beyond the deadline~~  
7 ~~established in writing by the Underground Storage Tank Branch;~~

8 ~~(gg) Costs incurred for the purpose of compliance with permit conditions for permitted soil~~  
9 ~~treatment facilities;~~

10 ~~(hh) The portion of the lease or rental cost for capital equipment that exceed the purchase~~  
11 ~~price of the equipment;~~

12 ~~(ii) Costs incurred for the removal, transportation and disposal, recycling, or treatment of~~  
13 ~~free product from within the excavation zone of a UST system, that is not permanently closed, for~~  
14 ~~which contamination above applicable screening levels outside the excavation zone has not been~~  
15 ~~confirmed;~~

16 ~~(jj) Costs incurred for the purpose of meeting the requirements of 401 KAR 42:020, 42:030,~~  
17 ~~and 42:040;~~

18 ~~(kk) Equipment replacements costs covered by equipment warranty;~~

19 ~~(H) Costs incurred to replace a monitoring well destroyed, damaged, or that cannot be~~  
20 ~~accessed or located due to actions within the control of the applicant;~~

21 ~~(n) Costs incurred for the purpose of compliance with permit conditions for permitted soil~~  
22 ~~treatment facilities;~~

1           (o) Costs incurred for the removal, transportation and disposal, recycling, or treatment of  
2 free product from within the excavation zone of a UST system, that is not permanently closed, for  
3 which contamination above applicable screening levels outside the excavation zone has not been  
4 confirmed;

5           (p) Costs relating to compliance with a local program having corrective action standards  
6 more stringent than those directed by the cabinet;

7           (q) A laboratory "rush" fee, unless directed by the UST Branch;

8           (r) Cost of resampling and laboratory tests performed as a result of an operational or  
9 methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become  
10 certified or accredited under the requirements of KRS 224.60-130(1)(a) and Section 20;

11           (s) Laboratory costs incurred after the laboratory certification eligibility expiration date;

12           (t) Costs incurred for additional assessment or Corrective Action Plan modification  
13 necessary as a result of delayed implementation of the Corrective Action Plan, beyond the deadline  
14 established in writing by the UST Branch;

15           (u) Cost incurred as a result of delayed implementation of a written directive, beyond  
16 twelve (12) months from the issuance date of the deadline established in writing by the UST  
17 Branch;

18           (v) The portion of the lease or rental cost for capital equipment that exceed the purchase  
19 price of the equipment;

20           (w) Equipment replacement costs covered by equipment warranty;

21           (x) Payment of the owner or operator's personnel for overtime or for staff time in planning  
22 or implementing corrective action as defined in KRS 224.60-115(4);

23           (y) Out-of-state travel expense, including air fare;

- 1           (z) Contractor markup expense for a normally expected overhead item or in-stock material;  
2           (aa) Contractor markup expense for personnel cost;  
3           (bb) Markup for pass-through costs for utilities and employee expense accounts;  
4           (cc) Fifteen (15) percent markup for the cost of corrective action for~~and~~  
5           ~~(mm)~~ an eligible company or partnership that employs a subcontractor, a subsidiary  
6 company, or other vendor, that is affiliated with the eligible company or partnership or a principle  
7 of the eligible company or partnerships;  
8           (dd) Overtime for individual eligible company or partnership personnel exceeding forty  
9 (40) hours during a standard workweek;  
10           (ee) Actions resulting from contractor error or negligence;  
11           (ff) A contractor surcharge implemented because the owner or operator failed to act in a  
12 timely fashion;  
13           (gg) Costs covered by the contractor’s liability insurance;  
14           (hh) A cost covered by insurance payable to the owner or operator;  
15           (ii) Interest on an overdue account or loan;  
16           (jj) Loss of business, income or profits;  
17           (kk) An attorney fee related to:  
18           1. Judicial or administrative litigation;  
19           2. Consultation on administrative regulations;  
20           3. Preparation or submittal of documentation related to reimbursement process; or  
21           4. Other legal services determined by the UST Branch not to be integral to the performance  
22 of corrective action;

1 (ll) Corrective action costs incurred after the eligible company or partnership eligibility  
2 expiration date;

3 (mm) Corrective action activities subsequent to the issuance of a no further action letter,  
4 unless directed in writing by the UST Branch;

5 (nn) Facility or aesthetic improvements, including costs to upgrade the facility, except for  
6 approved surface replacement in accordance with Section 10;

7 (oo) Decreased property values for the facility;

8 (pp) The cost of surface material replacement for areas not removed or damaged as part of  
9 corrective action; and

10 (qq) Other services or costs determined by the UST Branch to be an unreasonable or  
11 unnecessary cost of corrective action as established in KRS 224.60-140(5)[shall not receive the  
12 fifteen (15) percent mark up for the cost of corrective action].

13 ~~[Section 13. Reimbursement Rates. (1) Established rates for eligible reimbursement shall~~  
14 ~~be identified in the Contractor Cost Outline.~~

15 ~~(2) Costs not included in the Contractor Cost Outline shall be reasonable and necessary to~~  
16 ~~the performance of corrective action in order to be eligible for reimbursement.~~

17 ~~(3) Pass through costs for utilities and employee expense accounts shall not receive a~~  
18 ~~markup on the actual cost.~~

19 ~~(4) A fifteen (15) percent total markup above the estimated cost of materials purchased~~  
20 ~~associated with a task for which there is not a formulated unit rate shall be allowed.]~~

21 Section 14.~~[Request for]~~ Re-Evaluation of a~~[the]~~ Reimbursable Amount~~[Identified in a~~  
22 ~~Written Directive]~~. (1) If the applicant determines that the scope of work identified in a written  
23 directive cannot be completed without exceeding the total reimbursable amount set forth in the

1 written directive, a request for re-evaluation of the reimbursable amount may be submitted to the  
2 UST[Underground Storage Tank] Branch on the UST Re-Evaluation of a Reimbursable  
3 Amount[Re-Evaluation Form], DWM 4291[DEP 0062], and shall include:

4 (a) The submittal of three (3) current written estimates, for services or materials not  
5 provided by the contracting company or partnership, from subcontractors in the area in which the  
6 facility is located, if applicable;

7 (b) The submittal of an itemized cost breakdown of the eligible company's[contracting  
8 company] or partnership's time and materials to be used for the completion of[in completing] the  
9 written directive; and

10 (c) The costs shall be calculated using the personnel and equipment rates established in  
11 Section 3.0[3] of the UST PSTEAF Reimbursement Rates[Contractor Cost Outline].

12 (2) The UST[Underground Storage Tank] Branch shall review the itemized cost breakdown  
13 and based upon a determination of reasonable and necessary costs, the UST[Underground Storage  
14 Tank] Branch shall either:

15 (a) Determine that the itemized cost breakdown exceeds the reimbursable amount, rescind  
16 the written directive, and issue a new written directive establishing a not-to-exceed amount; or

17 (b) Determine that the reasonable and necessary costs itemized are at or below the initial  
18 reimbursement amount, and deny the request for re-evaluation, leaving the reimbursable amount  
19 identified in the original directive letter in effect.

20 (3) If the establishment of a not-to-exceed amount is warranted, in accordance with  
21 subsection (2)(a) of this section, final reimbursement shall be determined on an actual time and  
22 materials basis, and the appropriate supporting documentation shall be submitted to the

1 ~~UST[Underground Storage Tank]~~ Branch, in accordance with Section 8(11)[8(8)] ~~of this~~  
2 ~~administrative regulation~~], as an attachment to the claim.

3 Section 15. Reconsideration for a Claim. (1) An applicant may request a reconsideration  
4 of a denial of a claim request, or portion thereof.

5 (2) The applicant shall submit:

6 (a) Documented on the UST Reconsideration Request, DWM 4290, and shall include:

7 1. A statement of the grounds for reconsideration;

8 2. Supporting documents;

9 3. Other evidence not previously considered; and

10 (b) Received by the cabinet within thirty (30) days from the date the person has notice, or  
11 could reasonably have had notice, of the denial.

12 (3) The cabinet shall reconsider the previous claim decision, if the evidence accompanying  
13 the request warrants reconsideration by demonstrating clear error or through submittal of  
14 additional documentation.

15 (4) The cabinet shall not reconsider a matter more than once.

16 Section 16. Signatures. (1) Application and reimbursement forms required by this  
17 administrative regulation for which a signature is required shall be signed by an eligible petroleum  
18 storage tank owner or operator as follows:

19 (a) For a corporation or limited liability company, by:

20 1. A president,~~[or]~~ secretary, or member; or

21 2. A legally[The duly] authorized representative or agent[~~of the president or secretary if~~  
22 ~~the representative or agent is responsible for overall operation of the facility; or~~

23 ~~3. A person designated by the board of directors by means of a corporate resolution];~~

1 (b) For a partnership, sole proprietorship or individual, by:

2 1. A general partner;[5]

3 2.[5,the] Proprietor; or

4 3. Individual named as the applicant[respectively];

5 (c) For a municipality, by:

6 1. A principal;

7 2. Executive officer; or

8 3. Ranking elected official; or

9 (d) A person designated by a court to act on behalf of the eligible petroleum storage tank  
10 owner or operator.

11 (2) A claim form or application for assistance shall also be signed by[5]

12 ~~(a) The professional engineer or professional geologist responsible for overseeing~~  
13 ~~corrective action; and~~

14 ~~(b)] an authorized representative of the eligible company or partnership, unless corrective~~  
15 ~~action commenced prior to July 1, 1999.~~

16 (3) The owner or operator shall submit documentary evidence to substantiate the legality  
17 of an authorized representative's power of agency or power of attorney.

18 Section 17. Financial Audits. (1) An entity shall be subject to a financial audit if it is an  
19 entity described in KRS 224.60-130(1)(k).

20 (2) The cabinet shall audit an entity if:

21 (a) A required document submitted to the cabinet appears to be fraudulent; or

22 (b) There is evidence that the entity has violated a federal or state law or regulation related  
23 to its actions.

1           (3) Upon written request by the cabinet, records, as described in KRS 224.60-130(1)(k),  
2 shall be provided to the cabinet during a financial audit.

3           (4)(a) The cabinet shall notify the subject of the audit, in writing, of the date that the audit  
4 is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled  
5 start of the audit.

6           (b) A decision to reschedule the audit shall rest solely with the cabinet, and it shall not be  
7 rescheduled more than thirty (30) days after the date of the original audit.

8           (5)(a) If the petroleum storage tank owner or operator fails to maintain records as required  
9 by KRS 224.60-130(1)(k), the cabinet shall recover money reimbursed to the owner or operator  
10 for the cost of corrective action at the facility to which the missing documents relate.

11           (b) If an eligible company or partnership or subcontractor fails to maintain records as  
12 required by KRS 224.60-130(1)(k), the cabinet shall recover any monies paid to the entity pursuant  
13 to a contract or agreement to perform a corrective action service at that facility.

14           (6) If the audit by the cabinet finds an improper, irregular, or illegal use of money received  
15 directly or indirectly from the cabinet, or that the money was obtained by fraud or  
16 misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil  
17 and criminal investigation.

18           (7)(a) Reimbursements to an owner or operator who fails to cooperate with an audit shall  
19 be subject to recovery by the cabinet.

20           (b) Failure by an entity, who contracts or subcontracts for corrective action services at a  
21 facility, to cooperate with an audit shall result in the recovery of funds paid by the cabinet for  
22 corrective action services at that facility[16]. [~~Loss of Future Reimbursement Eligibility. (1) A~~  
23 ~~petroleum storage tank owner or operator shall be ineligible to receive future reimbursement from~~

1 the Financial Responsibility Account or Petroleum Storage Tank Account if the petroleum storage  
2 tank owner or operator has:

3 (a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or

4 (b) Knowingly made a false statement, representation, or certification in an application,  
5 reimbursement request, or other document submitted to the cabinet.

6 (2) A cost incurred by, or paid from, the cabinet based on false or inaccurate information,  
7 or a false statement, representation, or certification shall be recovered by the cabinet from the  
8 person who asserted the false or inaccurate information, or false statement, representation, or  
9 certification.

10 (3) The cabinet shall have the right to recover the money paid to a petroleum storage tank  
11 owner or operator, or a contractor if:

12 (a) The amount was paid due to an error of the cabinet in processing a claim for  
13 reimbursement;

14 (b) The amount was paid due to a mistake, error, or inaccurate information in the claim  
15 submitted by the petroleum storage tank owner or operator or in an invoice submitted by a  
16 contractor; or

17 (c) A person has obtained reimbursement from the cabinet by fraud or intentional  
18 misrepresentation.

19 Section 17. Subrogation. Prior to making reimbursement of a claim, the cabinet shall  
20 require, by subrogation, the rights of the person seeking reimbursement or recover the amounts  
21 paid by the cabinet for the performance of corrective action from the person responsible or liable  
22 for the release.]

1           Section 18.~~[Facility Inspections. The cabinet shall conduct inspections in accordance with~~  
2 ~~KRS 224.60-130(1)(1) to determine the reasonableness and necessity of the costs of corrective~~  
3 ~~action.~~

4           ~~(1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement~~  
5 ~~for the costs of corrective action.~~

6           ~~(2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the~~  
7 ~~owner or operator ineligible for reimbursement. Money previously paid to the petroleum storage~~  
8 ~~tank owner or operator of the facility shall be repaid to, or recovered by, the cabinet.~~

9           ~~(3)(a) The cabinet shall be present at the facility during all petroleum storage tank~~  
10 ~~permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;~~

11           ~~(b) A petroleum storage tank owner or operator shall contact the appropriate Field~~  
12 ~~Operations Branch regional office, by certified mail, to schedule a date to have an inspector present~~  
13 ~~at the facility during petroleum storage tank permanent closure activities. The certified mail notice~~  
14 ~~shall be received a minimum of fourteen (14) calendar days prior to commencement of the~~  
15 ~~permanent closure.~~

16           ~~(c) If the inspector cannot be present at the facility on the day scheduled by the notice sent~~  
17 ~~as required in paragraph (b) of this subsection, the inspector shall, by written notice, require the~~  
18 ~~petroleum storage tank owner or operator to reschedule the permanent closure to a proposed date.~~  
19 ~~This notice shall be mailed by the cabinet no later than ten (10) days prior to the date scheduled~~  
20 ~~by the petroleum storage tank owner or operator.~~

21           ~~(d) If the inspector fails to issue notice to reschedule the permanent closure, or is not present~~  
22 ~~on the day set by the notice, the permanent closure may proceed without penalty.~~

23           ~~(e) This subsection shall not apply to an emergency removal ordered by the cabinet.~~

1 ~~(4)(a) A petroleum storage tank owner or operator shall:~~

2 ~~1. Provide an inspector full access to an area or well for the collection of samples;~~

3 ~~2. Split samples obtained at the facility with the cabinet, if required by the inspector;~~

4 ~~3. Resample an area or well for which the result of analytical testing obtained by the cabinet~~  
5 ~~differs significantly from the result obtained by the petroleum storage tank owner or operator; and~~

6 ~~4. Have the burden of proving the validity of analytical results, if a discrepancy remains~~  
7 ~~after resampling.~~

8 ~~(b) The cabinet shall not reimburse the costs of resampling if proper sampling, sample~~  
9 ~~handling, or analytical protocols were not adhered to by the contractor or certified laboratory.~~

10 ~~(c) Failure to allow sample collection, or to split samples with the cabinet, shall render the~~  
11 ~~owner or operator ineligible for reimbursement.~~

12 ~~Section 19.] Account Balance. (1) The unobligated balance of the FRA[~~Financial~~~~  
13 ~~Responsibility Account]~~ shall not be less than \$1,000,000, so as to ensure a reserve balance  
14 adequate to meet federal financial responsibility requirements for participants in the account.

15 (2)(a) If the unobligated balance of the FRA[~~Financial Responsibility Account]~~ is  
16 \$1,000,000 or less, or the reimbursement of additional claims would cause the unobligated balance  
17 of the fund to be less than \$1,000,000, the cabinet shall immediately suspend claim  
18 reimbursements and the approval of applications until the unobligated balance is greater than  
19 \$1,000,000.

20 (b) If the suspension is lifted, the priority of reimbursement for claims submitted related to  
21 an approved application for assistance shall be determined by the date of the claim submittal.

22 (c) During the suspension, all written directives from the cabinet shall be issued in  
23 accordance with Section 21.

1        Section 19. Eligible Companies and Partnerships. (1) To be eligible to contract with a  
2 petroleum storage tank owner or operator seeking reimbursement from the cabinet, a company or  
3 partnership shall:

4        (a) Employ or contract with a professional engineer or a professional geologist;

5        (b) Be authorized to conduct business in the Commonwealth of Kentucky and remain  
6 active, and in good standing, with the Kentucky Secretary of State;

7        (c) Hold, in good standing, all licenses, permits, training certifications, or other authority  
8 required to perform corrective action services, or otherwise conduct business, in Kentucky;

9        (d)1. Maintain, at a minimum, general and professional liability insurance and pollution or  
10 property coverage in the amount of \$1,000,000; and

11        2. Add the cabinet as an additional interest on the policy to be notified, by the insurance  
12 company, when there is a lapse of insurance coverage;

13        (e) Be approved in writing by the cabinet as eligible to contract with a petroleum storage  
14 tank owner or operator seeking reimbursement from the cabinet to perform corrective action  
15 services;

16        (f) A company or partnership holding an existing contract with a petroleum storage tank  
17 owner or operator seeking reimbursement shall comply with this subsection and shall submit the  
18 UST Application for a PSTEAF Eligible Company or Partnership, DWM 4284;

19        (g) An authorized representative of an eligible company or partnership shall sign an  
20 application or claim payment request in addition to the eligible owner or operator. The eligible  
21 company or partnership shall certify that:

22        1. The information provided in the claim is true and correct; and

1           2. Each claim payment cost is reasonable, necessary, and was performed in compliance  
2 with 401 KAR 42:060 and this administrative regulation.

3           (2) Application requirements for a company or partnership eligibility shall include  
4 submittal of:

5           (a) A completed UST Application for a PSTEAF Eligible Company or Partnership, DWM  
6 4284;

7           (b) Verification of the employment or contracting of a professional engineer or a  
8 professional geologist; and

9           (c) A list of the names and address of officers and principals of the applicant.

10          (3) The cabinet shall inspect the records and business premises of the applicant if necessary  
11 to verify information in the application or to assist in the evaluation of the applicant's capabilities.

12          (4) The cabinet shall require additional information and documentation if necessary to  
13 verify information in the application.

14          (5) An application for eligible company or partnership status shall be denied if the  
15 applicant:

16          (a) Fails to provide the information required in the application or in this administrative  
17 regulation;

18          (b) Does not meet the requirements of subsection (1) of this section;

19          (c) Fails to allow cabinet staff to access company records for audit purposes in accordance  
20 with Section 17;

21          (d) Fails to provide additional information and documentation requested by the cabinet to  
22 verify that the requirements of this administrative regulation have been met;

23          (e) Provides false or misleading information in the application; or

1 (f) Fails to maintain general and professional liability insurance and pollution or property  
2 coverage.

3 (6) An applicant whose application for company or partnership eligibility is denied may  
4 appeal the determination by requesting a reconsideration in accordance with Section 15.

5 (7) The cabinet shall issue a letter of eligibility to a qualifying applicant.

6 (8) An amended application for a company or partnership shall be submitted:

7 (a) When the information in the UST Application for a PSTEAF Eligible Company or  
8 Partnership, DWM 4284, has changed; or

9 (b) When requested by the cabinet to submit an updated application upon the receipt of  
10 information indicating a change to application information.

11 (9) Eligibility and renewal procedures shall be established in this subsection.

12 (a) The cabinet shall issue a letter of eligibility to each company or partnership that  
13 successfully complies with this administrative regulation.

14 (b) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The  
15 company or partnership shall be responsible for renewing eligibility prior to expiration.

16 (c) An application for eligibility renewal shall be submitted to the cabinet on the UST  
17 Application for a PSTEAF Eligible Company or Partnership, DWM 4284.

18 (d) The failure of the company or partnership, under contract with an owner or operator, to  
19 renew eligibility shall render corrective action costs incurred after the expiration date ineligible  
20 for reimbursement.

21 (10) Revocation of eligibility procedures shall be as established in this subsection.

22 (a) A letter of eligibility issued in accordance with this administrative regulation shall be  
23 revoked if:

1           1. The eligible company or partnership no longer meets the eligibility requirements  
2 established in subsection (1);

3           2. The eligible company or partnership or its employee or agent knowingly submits  
4 materially false information or documentation, or a false payment request, to an owner, operator,  
5 or the cabinet;

6           3. The eligible company or partnership, or a current officer, director, or principal of that  
7 company, has been convicted of an environmental crime;

8           4. The eligible company or partnership has failed to comply with the terms set forth in  
9 Section 17; or

10          5. The eligible company or partnership obtained eligibility through fraud or  
11 misrepresentation.

12          (b) The cabinet shall issue a letter by certified mail notifying a noncompliant company or  
13 partnership that its eligibility has been revoked by action of the cabinet.

14          Section 20. Laboratory Certification. (1) Applicability and requirements for PSTeAF  
15 eligibility criteria for laboratory certification shall be as established in this section.

16          (a) Owners and operators seeking reimbursement from the PSTeAF for analytical testing  
17 shall utilize a laboratory certified in accordance with this section.

18          (b) This section shall apply to analytical testing performed on or after October 1, 1999.

19          (c) An owner or operator of a petroleum storage tank who fails to comply with this  
20 requirement shall not be reimbursed by the cabinet for costs related to analytical testing.

21          (2) Certification requirements for laboratory certification shall be as established in this  
22 subsection.

23          (a) A laboratory shall demonstrate current accreditation by submitting:

1 1. The American Association for Laboratory Accreditation;

2 2. A state approved to accredit environmental laboratories, in accordance with National  
3 Environmental Laboratory Accreditation Program requirements and standards; or

4 3. Other certification approved by the cabinet.

5 (b) A laboratory seeking certification from the cabinet shall submit a completed UST  
6 Application for Laboratory Certification, DWM 4283.

7 1. The application shall include proof of accreditation as described in subsection (2)(a) of  
8 this section.

9 2. The laboratory shall be capable of analyzing each of the parameters listed in Table 7 and  
10 Table 8 in the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060,  
11 using at least one (1) of the acceptable methods listed in the tables[for each of the parameters listed  
12 on Table A and Table B in the UST Corrective Action Manual, incorporated by reference in 401  
13 KAR 42:060].

14 (3) The cabinet shall reimburse a petroleum storage tank owner or operator for the cost of  
15 a laboratory analysis if the:

16 (a) Analysis is conducted in accordance with the established parameters and methods;

17 (b) Analysis is required by written directive by the cabinet and performed in accordance  
18 with 401 KAR Chapter 42; and

19 (c) Laboratory is certified by the cabinet to conduct that analysis.

20 (4) Requirements for maintaining laboratory certification shall be as established in this  
21 subsection.

1 (a) A certified laboratory shall maintain accreditation by the American Association for  
2 Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for  
3 the duration of certification.

4 (b) If a certified laboratory's accreditation, in accordance with subsection (1) of this  
5 section, is renewed, or otherwise changes in status, the certified laboratory shall submit updated  
6 documentation of the accreditation status to the cabinet within thirty (30) days.

7 (c)1. A laboratory holding valid certification from the UST Branch issued prior to October  
8 6, 2011 shall not be required to submit a new UST Application for Laboratory Certification, DWM  
9 4283.

10 2. In order to maintain certification status, the certified laboratory shall comply with this  
11 subsection.

12 (d) If a certified laboratory fails to maintain certification in accordance with this subsection,  
13 the laboratory shall be required to submit an UST Application for Laboratory Certification, DWM  
14 4283, in accordance with subsection (2) of this section.

15 (5)(a) The cabinet shall revoke a certification if the applicant:

16 1. Obtains the certification through fraud or misrepresentation; or

17 2. Knowingly or intentionally submits materially false information to owners, operators,  
18 contractors, or the cabinet.

19 (b) The cabinet shall, within ten (10) days of a revocation determination, notify the  
20 laboratory, in writing, of the revocation of certification.

21 Section 21. Facility Ranking System. (1) Upon a determination of insufficient funding  
22 being available to initiate corrective action at facilities, facilities shall be ranked according to the  
23 extent of damage to the environment, the potential threat to human health, and the financial ability

1 of the petroleum storage tank owner or operator to perform corrective action, in order to prioritize  
2 the completion of corrective action and the subsequent reimbursement of eligible costs.

3 (2) Actions directed and documented by the Environmental Response Branch, upon the  
4 cabinet's declaration of an environmental emergency, shall take priority over the ranking system  
5 in this administrative regulation. Once the Environmental Response Branch terminates the  
6 emergency phase, subsequent actions at the facility shall be prioritized in accordance with this  
7 administrative regulation.

8 (3) Actions performed by, or on behalf of, the cabinet in accordance with KRS 224.60-  
9 135(2) shall not be subject to the ranking system.

10 (4) Facilities performing site checks or initial abatement, at the written direction of the  
11 cabinet in accordance with the UST Corrective Action Manual, incorporated by reference in 401  
12 KAR 42:060, shall not be subject to the ranking system.

13 (5) Those facilities for which the owner or operator has verified, through submittal of a  
14 notarized UST Affidavit of Waiver for PSTEAF Reimbursement, DWM 4281, that reimbursement  
15 from the PSTEAF will not be sought shall not be subject to the ranking system.

16 (6)(a) Facilities eligible to participate in the FRA and the PSTA shall be ranked for  
17 purposes of addressing the completion of corrective action.

18 1. Those facilities, with releases for which the cabinet has not issued a No Further Action  
19 Letter shall be a Rank 1, if:

20 a. Confirmed contamination within domestic-use wells, domestic-use springs, or domestic-  
21 use cisterns exceeding the maximum contaminant levels specified in 401 KAR Chapter 8; or

22 b. Confirmed vapor intrusion, as defined in 401 KAR 42:005, in occupied residential or  
23 commercial buildings.

1 2. All other facilities with releases for which the cabinet has not issued a No Further Action

2 Letter shall be a Rank 2.

3 (b) Facilities shall be further categorized within their respective Rank based on the financial  
4 ability of the owner or operator.

5 1. Facilities shall be placed in Category 1 within their respective rank if:

6 a. The owner's or operator's average total income for the last five (5) years is less than or  
7 equal to \$100,000; or

8 b. The owner or operator is registered and recognized by the federal government as a tax-  
9 exempt nonprofit organization.

10 2. Facilities shall be placed in Category 2 within their respective rank if the owner's or  
11 operator's average total income for the last five (5) years is more than \$100,000.

12 3. The cabinet shall utilize the information provided in an owner's or operator's application  
13 for assistance for PSTEAF, for purposes of determining financial ability to perform corrective  
14 action.

15 (c) The cabinet shall be provided access to a facility for the purpose of verifying  
16 classification. Refusal by an owner or operator to allow access requested by the cabinet shall render  
17 the facility ineligible for reimbursement from the cabinet.

18 (d) If the cabinet receives misrepresentations, or otherwise inaccurate information, or  
19 receives new information related to specific facilities, it shall amend facility rankings and  
20 categories in accordance with this subsection.

21 (e) Issuance of written directives shall be prioritized for facilities within the FRA and the  
22 PSTA, respectively, according to rank and category, in the following order:

23 1. Rank 1, Category 1;

1           2. Rank 1, Category 2;

2           3. Rank 2, Category 1; and

3           4. Rank 2, Category 2.

4           (f) The cabinet shall consider the current legislatively enacted budget and available funding  
5 in making the allocations described in subsection (1) of this section.

6           (g) The cabinet shall notify owners or operators of the decision to suspend written  
7 directives for specified rankings within either the PSTA or the FRA, upon a determination of  
8 insufficient funding being available to initiate corrective action in all rankings.

9           Section 22. Extensions. (1) The owner or operator of a UST system may request an  
10 extension to a deadline established by this administrative regulation or established by the cabinet  
11 in writing in accordance with this administrative regulation.

12           (2) The extension request shall be submitted in writing and received by the UST Branch of  
13 the Division of Waste Management prior to the deadline.

14           (3) The cabinet shall grant an extension, if an extension would be equitable, does not impact  
15 the PSTEAF's financial viability, and would not have a detrimental impact on human health or the  
16 environment.

17           (4) The cabinet shall not grant an extension for any requirements established in Sections  
18 12 or 15.

19           Section 23. Incorporation by Reference. (1) The following material is incorporated by  
20 reference:

21           (a) ~~"UST[Application for Assistance", DEP 6063, November 2016;~~

22           ~~(b) –"] Affidavit of Termination of PSTEAF Contract", DWM 4280[DEP 0061], March~~  
23 2018[November 2016];

- 1        (b) "UST Affidavit of Waiver for PSTEAF Reimbursement", DWM 4281, March 2018;  
2        (c) "UST Application for Assistance for PSTEAF", DWM 4282, March 2018;  
3        (d) "UST Application for Laboratory Certification", DWM 4283, March 2018;  
4        (e) "UST Application for a PSTEAF Eligible Company or Partnership", DWM 4284,  
5 March 2018;  
6        (f) "UST Claim Request for Actions Not Directed", DWM 4285, March 2018;  
7        (g) "UST Claim Request for Directed Actions", DWM 4286, March 2018;  
8        (h) "UST Miscellaneous Tasks Reimbursement Worksheet", DWM 4287, March 2018;  
9        (i) "UST Optional Soil Removal at Permanent Closure Reimbursement Worksheet", DWM  
10 4288, March 2018;  
11        (j) "UST Payment Waiver", DWM 4289, March 2018;  
12        (k) "UST PSTEAF Reimbursement Rates", March 2018;  
13        (l) "UST Reconsideration Request", DWM 4290, March 2018;  
14        (m) "UST Re-Evaluation of a Reimbursable Amount", DWM 4291, March 2018; and  
15        (n) "UST Third-Party Claim", DWM 4292, March 2018["Reimbursable Amount Re-  
16 Evaluation", DEP 0062, November 2016;  
17        ~~(d) "Claim Request for Actions Not Directed by the USTB", DEP 6064, November 2016;~~  
18        ~~(e) "Miscellaneous Task Reimbursement Worksheet", DEP 6093, November 2016;~~  
19        ~~(f) "Facility Restoration Reimbursement Worksheet", DEP 6095, November 2016;~~  
20        ~~(g) "Optional Soil Removal Outside the Excavation Zone Reimbursement Worksheet",~~  
21 ~~DEP 6094, November 2016;~~  
22        ~~(h) "Payment Verification Affidavit", DEP 6075, November 2016;~~  
23        ~~(i) "Payment Waiver", DEP 6077, November 2016;~~

1           ~~(j) "Cost Estimate", DEP 6090, November 2016;~~  
2           ~~(k) "Underground Storage Tank Branch Written Directive Claim Request", DEP 6091,~~  
3 ~~November 2016; and~~  
4           ~~(l) "Contractor Cost Outline", November 2016].~~

5           (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
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7 Monday through Friday, 8:00[8] a.m. to 4:30 p.m.

8           (3) This material may also be obtained at the Division of Waste Management's Web site  
9 at <http://waste.ky.gov/ust>.